

THE

16.

TRIAL

OF THE

LORD AUDLEY,

EARL

OF

CASTLEHAVEN,

For inhumanely Causing his Own WIFE to be

R A V I S H E D,

AND FOR

B U G G E R Y

L O N D O N;

Printed in the Year. 1 6 7 9.

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LONDON,

Printed in the Year 1672.

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Lord Audley, Earl of Castlehaven.

Judges,

SIR Tho. Coventry, Lord Keeper, Lord High Steward for that day.

Judges Assistant.

Hide, Lord Chief Justice.

Richardson, Lord Chief Justice of the Common Pleas.

Davenport, Lord Chief Baron.

Judge Jones. 25 Judge Whitlock.

Judge Harvey. 22 Judge Crooke.

Baron Denham.

Kings Council.

1. Finch Recorder. 25 3. Mr. Attorney.

2. Sr. Randal Crew. 22 4. Mr. Solicitor.

Queens Attorney.

The Names of the Jury follow.

THE Lords being all met and called, the Jury appeared full, and the Lord High Stewards Patent was read, which was dated the 17th. of April: Anno Dom. 1631.

The Lord High Steward made a short Speech, praising and extolling the Kings Justice, and Care of the State, that his Majesty hearing of these abominable Crimes by report, could hardly believe them not only reported, but now by his Majesties Special

cial Command, and Direction, Tryed and found by a Jury of able Men, and sufficient Men at *Salisbury* then, who opened the full business, and explained the meaning of the Law for such heinous Crimes; First, for the -- Secondly, for the *Sodomy*; when, and in what Kings Reign these Offences were made Death by the Common Law.

The Prisoner being brought to the Bar by the *Lieutenant* of the Tower, the Lord Steward spoke to him, bewailing of his Case for falling so far from God, and expressed his sorrow for him, not only as for a Subject, but as a Peer; and withall gave him this Caveat; that in, and out of all the Confession, and Deposition concerning this business, the Earl never fell into these foul Crimes, until he first fell from God, and changed his Religion, and that by *Fountayle*, and by perswasion of his Neighbour *Roman Catholicks*, and that he leaving God, God left him, and that the Dignity, of the Person did aggravate the Crime.

The Prisoner desires to speak.

The Lord Steward told him he should have time and leasure enough to speak for himself. In the mean time if he had any thing to deliver shortly; he should be heard, desiring him to speak boldly without fear; that he should have an honourable Tryal by those Peers he saw present, who were without exception. But withal he desired him for his own weale, and the sooner to obtain mercy from the King, to confess freely without circumstances, that his own Conscience was more than a thousand Witnesses.

Then was the Indictment Read.

First, For *Sodomitry*, with *Florence Fitzh-Patrich*, alias *Fumy*, at *Sarum*, the First of *June* 1630.

Secondly, For a Rape committed against his own Wife, in compelling her, and forcing her to yield against her will, to the lust of one *Giles Bradway* at *Sarum*, the 20th of *June* 1630. He the said Earl holding his Wife by one Arm and one Leg, until the Fellow had satisfied himself, the Earl holding a Knife in one hand; which done, the Lady endeavoured to kill her self with a Knife, but they took the Knife from her, and brake it.

Thirdly, That the same Night he committed Buggery with *Florence Fitzh-Patrich*, alias *Fume*, being the 20th of *June* at *Sarum*.

To all three Indictments, he pleads not guilty, and desires leave to speak, which was granted so he were short.

The Earl alleges he is no Scholar, that he hath been kept these Six Weeks close Prisoner in the Tower, where he could have no occasion to seek out any thing that might clear him, and entreats the Lord Steward that he might have liberty to have Counsel. The

The Lord Steward replied, that in all that time, he had more notice of the *Proceedings* against him, than any Prisoner before had, to his Knowledg, being often before the *Council Table*, and face to face before his Accusers; yet to satisfy the Earl, the Lord Steward asked the Opinion of the Judges, who all in one voice answered, that it could not be granted but in points of Law; if any such occurred, he should have present Determination: Then the Lord Steward said, that his Tryal must be *secundum veritatem facti*, little *de jure*: If his Lordship or the Lords doubted any thing, let them shew it to the Lord Steward, and he would shew it to the Judges, and so have present Answer: That now he was to be judged by the Peers, who were without any exception, and because of their absolute Integrity, no Oath was to be taken from them: So the Earl pleads, not guilty, and submits himself to God, his Peers, and the right of his Cause.

Then began the Kings Attorney to speak, and open the whole business with the Circumstances and Depositions, pressing them all against the Prisoner, but so fairly and so judiciously, that none could do better, nor contrive so foul a business in fairer Terms.

First, Mr. Attorney clears himself of any former spleen against the Person, but against the Crimes; that he should say nothing but what he could prove clearly; (which indeed he did perform) that these ten years past, during the time of his service to our late Majesty, and our now present Sovereign, he had never opened his mouth against any Peer in this Land; wherein he commended greatly the King in his Government, and the Peers in their Duty to their Sovereign; then he shewed that these Detestable Crimes were now prosecuted by a Legal Course of Law; that his Majesty and People might be clear of them: that the Lord Audley (for so they still called him) was Legally indicted in his own Countrey: Mr. Attorney goes on, causes the Depositions to be read.

First, he insists upon the Rape: If a man, saith he, doth force a married woman, and that she yeild thereof,

*If a Man
force a
Whore, yet
he dieth by
the Law.*

ter, yet he dieth by the Law, except she concieve; yea though she cried not, nor complained in time, for this is no exception against the King, but against the woman; Mr. Attorney persists, and shews there was no necessity of revealing it, because the woman was in their Power.

The Earl tried his Wifes Chastity the first night of her Mariage with him, and takes pleasure to make all men as bad as himself; he tempts her first night after her marriage, to lie with his Favorite *Anthil*, whom the Earl said he loved above all men; he saies also to her, that her Body was his Body, she must therefore use it at his pleasure, and used Scripture for it.

To *Anthil* the Son of an Inkeeper, being his Favourite, he gave his Eldest Daughter in Mariage with 8000l. of Portion; this argues strong affection, and that which all mankind abhors, (that is to have their Wives prostitute to others) the Earl took great delight in.

No Man being never so ill, but would have his Wife better.

Next to *Anthil* succeeds *Skipwith* in the Earls affections, whom from a Foot-Boy and a Page he advanced to be his Favourite, and so stiled him usually, and made him sit at his Table, and makes him his Bed-Fellow: *sed quorsum hoc?* I leave that to your Lordships to judge: to him he was not so favourable as to *Anthil*, in bestowing his Wife upon him, and was the Pander and the Baud; when as most men strive to leave their succession to legitimate Children, and not to Spurious Births.

So I will leave this point of Rape with this truth, that to force a woman is a great sin; but for an Husband to consent that his Wife shall be forced, is very much: but for an Husband to behold it, to be a spectator, yea to force her, it goes beyond the Bounds of humanity.

Now as to that sin which should not be named amongst Christians, and a strange sin in this Land, brought hither by strangers, I will scarce name it, the Law of England saies, that Knowledg is a Burden, and I think it is in this particular, *Crimen est bestiale contra naturam*; It is *Crimen Sodomiticum sine penetratione cum femina*; It is *Masculus cum Masculo*, and therefore Penetration is not lawful to make it Sodomy; *Cubitus immundus* supplies the Penetration; *Voluntas solum*

lam requiretur, non Copulatio; so that the Law of England makes distinction of degrees of this filthy sin, non est species Luceurie, sed Bestialitatis, quia non sequitur Conceptio. Many more passages were cited by Mr. Attorney both out of Scripture and Law, &c. So he concluded that every Breach of this filthy sin was within the compass of Felony.

Then he fell upon *Henry Skipwith*, born in Ireland, who being come from a Footman, to be the Earls Bedfellow and Favourite, got from the Earl 500l. per Annum, whereas he gave not his Son one hundred: he gave him also his House at Salisbury, and gave him many Leases, and all his goods by Gift and Deed, besides all these, he did prostitute unto him his Lady, and his Eldest Sons Wife.

Then did Mr. Attorney largely declare all my Lord Audlyes Business, how *Skipwith* and She did love one another in Ireland before her Mariage, but never enjoyed her, till after her Mariage, and by reason of her young years what Oyls and grease the Earl used, to make her fit for *Skipwith*, which his heart abhorred to relate. He did aggravate the more against the Earl, because *Skipwith* being in such exorbitant and excessive favour with the Earl; whatsoever his Wife had, must come by *Skipwith*, whatsoever the young Lady had, must come by *Skipwith*; yet all these favours bestowed upon *Skipwith* were nothing, in regard of that which is beyond all expression, that the Earl should be to him the impulsive instrument, to betray the Chastity of an Innocent Lady of 12 years, his own Daughter-in-Law, whose Children (if any had been) should have been Peers of this Realm; and which is worse, if worse can be, the Earl to be the Spectator and Enconrager of all these filthy Crimes.

This was confest by *Skipwith*, and the young Lady; and as for the Earl's Filthiness with his Maid *Blandina*, that was also touched, how the Earl's House was a common Brothel-house, the Earl himself delighting to be not only an Actor, but a continual Spectator of Filthiness; and also *Blandina* was abused by himself and his Servants for the space of seven hours together, until she had the French Pox; and so Mr. Attorney ended his Speech, recommending the Business to the Peers.

Then

*The Ladies
were in a
Room behind
the Chan-
celor; the Lords
that went to
them were
four, Bed-
ford, Essex,
Warwick,
& Leicester.*

Then were all the Witnesses examined, *Fumy*, alias *Florence*, *Fitz-Patrick*, *Giles Bradway*, *Skipwith*, *Scot*, *Flore*, *Walter Tite*, his Steward, their former Depositions were read to them all, which now again upon Oath they did acknowledge to be true; Both the Ladies Depositions were also read, and some of the Lords were sent to them to take their Oaths whether they were true or not, which they constantly stood to upon Oath.

This did Mr. Attorney clearly prove what he had alledged against the Earl; not one Circumstance at all which he alledged against the Earl, which was not proved by two of the Witnesses at the least.

Then spake the *Kings Solicitor*, resuming all that was said, and proved by Mr. Attorney, alledging more Law to prove the same; but in substance said no more than what was said before.

Then did the Prisoner speak for himself.

First he excepts against the Witnesses, as base and unworthy persons, suborned by his Wife and his Son, to take away his Life; whereas, by Law, Witnesses ought to be honest persons and undefamed, which they are not; and alledges Law for it: for *Fitch-Patrick*, he said he was a *Recusant*, and therefore could be no Witness; which was repelled, because he was never convicted for the same; and therefore the Judges could take no notice of his Recusancy.

The Earl said further, That for his Knavery he had oftentimes beaten him, and turned him away; and that he was now hired by his Son to bear witness against him: It was repelled again by the *Lord Steward*, because it could not be.

It was answered again by the Judges, that in Law for the King, all Witnesses are held to be sufficient, and that no honest and undefamed men could be witnesses of such bad and monstrous Actions; and besides, it concerned the Deponents Lives as well as the Prisoners.

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The Lord Steward further adds, that the Earl had fair dealing, beyond the practice, in that the Witnesses were brought face to face to him, which were all brought there, except the two Ladies.

Secondly, That supposing it were true which they deposed (which he hoped would not so prove) he urged to be cleared, whether the Statute did intend that all kind of pollution (man with man) were *Buggery* or not, seeing by their Confession, there was no Penetration. To this (the Judges Advice being asked) they answered it was *Buggery* by the Law, and that the Law of this Land made no distinction of *Buggery*, if there be *Emissio Seminis*.

Thirdly, He excepted against the Deposition of the Witnesses for the Rape, alledging that the Actor being the Witness, deposed, that he had spent after he had strugled with the Countess, that he did not penetrate at all.

To this it was answered by the Judges (after asking) that the Countess her own Deposition did clear that Matter, who declared upon Oath that the Fellow had carnal dealing with her, being held by the Arm and Leg by her Husband, and never thereafter knew him.

Fourthly, He said that the Wife could not be a Witness against her Husband: the Judges being asked their Opinions therein by the Lord Steward, answered, that in Civil Matters between Party and Party, a Wife could not be a Witness; but for Criminal matters, and for the King, the Wife may be a Witness,

Fifthly, He urged that his Wife was incontinent, yea before he married her, and therefore a Whore can be no Witness: the Judges Opinions being asked in this Case, they answered, that a common Whore may be ravished, and so repelled his Answer.

Sixthly, He alledged that his Wife, his Son, and one Mr. William Wroghton had plotted together against his Life, and so all was

but their Suggestions ; this he could not prove, and was rejected and repelled again by the Lord Steward.

Lastly, He beseeched the Lords to consider what a dangerous preparative it was to this Kingdom, that a mans Wife and his Son, gaping after his Succession, the Devil and wicked servants complotting together, might bereave the greatest Peer of his Life.

Wherefore he desires them to see into what a Misery the Nobles, Gentry, and Commons did involve themselves by this example, if he were condemned ; and so humbly submitted himself to God, and the censure of his Peers, and was removed to a place appointed, till the Peers considered of it.

The Peers Names who were of the Grand Jury.

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|-------------------------------|--------------------------|
| 1. Weston, Lord Treasurer. | 15. Earl of Berkshire. |
| 2. Montague, Lord Privy Seal. | 16. Earl of Danby. |
| 3. Earl Marshal. | 17. Viscount Wambleton. |
| 4. Lord Chamberlain. | 18. Viscount Conway. |
| 5. Earl of Kent. | 19. Viscount Dorchester. |
| 6. Earl of Worcester. | 20. Viscount Wentworth. |
| 7. Earl of Bedford. | 21. Lord Clifford. |
| 8. Earl of Essex. | 22. Lord Piercy. |
| 9. Earl of Dorset. | 23. Lord Strange. |
| 10. Earl of Salisbury. | 24. Lord North. |
| 11. Earl of Leicester. | 25. Lord Peters. |
| 12. Earl of Warwick. | 26. Lord Edw. Howard. |
| 13. Earl of Holland. | 27. Lord Goring. |
| 14. Earl of Carlisle. | |

The Peers being upon their Honours, removed themselves to another Room, and debated the Matter near three hours ; all the Lords except one, found him guilty ; and that was my Lord North, who conceived him guilty of neither. But there was a great Contestation for the Buggery ; fifteen found him guilty, twelve not ; but the Major part carried it.

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The Kings *Serjeant at Law* desired Judgment.

Thereupon Sentence was pronounced against him by the Lord *Steward*, who adjudged him to be carried back to the Tower, and from thence to go to the place of his Execution, to be hanged till he died.

The Earl hearing his Judgment, fete down upon his Knees, and protested upon his Salvation and Damnation, that he was Innocent, and then desired the Lords to intercede for him to his Majesty; that his Majesty would be pleased to give him some respite, to settle and reconcile himself to his God (though he desired no Pardon of his Majesty of his Life) which the Lords promised him, and so the Court dissolved.

The Lord *Steward* gave him a Grave and Godly Admonition, desiring him to reconcile himself to God, and to be penitent for his Offences.

That he was beholding to his God, that he was not stricken suddenly in the very Acts of Sin, but he had this leasure to repent; with many other comfortable Speeches.

Notwithstanding this Judgment, there was a Warrant from his Majesty, upon the Lords Intercession, for his beheading.

The Manner of the Earl of Castlehaven, his coming to the Scaffold, Carriage and Speech there.

Mervin Lord Audley, Earl of Castlehaven; being at his Arraignment, the 25 of April 1631. recieved the Sentence of Death. It was not long after before the Warrant for his Execution was signed, and that to be upon Saturday the 14 of May following; notice whereof was given him, and his Coffin carried into the Tower about a week before, that he might the better prepare himself for Death: The Dean of Pauls, Doctor *Wmerse*, failed not daily to visit him; and to see how he stood, and to settle him in his

his Religion, upon the 1st. of May he published in writing under his Hand the Articles of his Faith; and the Day for him to suffer in being come, there repaired unto him of Noblemen, Gentry, and others, a world of people to behold the same.

He came attired in a plain black Groomer Suit, a falling Band, a Hat without a Band, coming along (notwithstanding the mighty Guard which attended him) such was the Concourſe and Preſſe of people, both men and women, to ſee him, that his perſon was ſcarce free; but even born along in the throng, inſomuch that his man was fain to ſettle anew, and amend his Gown on his Back; when he came to mount the Scaffold; which being aſcended, the Dean of Pauls and Doctor Wickham, together with his ſervants, he ſaluted the Noble Perſonages, and whole Aſſembly, ſhewing to them all a very Noble, Manly and Chearful Countenance, ſuch as ſeemed no ways daunted with the fear of Death. After a ſhort while ſhewing himſelf to the people, he addreſſed himſelf to Prayer, the Deans accompanying him in that Exerciſe, but ſomewhat apart; which being not long, he ſtood upon his Legs, and leaned upon the two Deans, conferring with them; then after he turned to the Lords, and ſpake to this effect;

I acknowledge with thankfulneſs the great Goodneſs of Almighty God; that it hath pleaſed his Divine Maieſty to beſtow on me many Endowments, as Honour, Riches, and the like, which I have miſpent, having been a vicious Liver, and juſtly deſerved Death, forasmuch and in that the leaſt ſin at Gods hands juſtly deſerveth Death, and no leſs; but for the two heinous Crimes with which I am branded, condemned, and here to ſuffer for, I do here deny them upon my death freely forgiving thoſe that have accuſed me, and have been the occaſion of my Death, even as freely as I my ſelf do deſire forgivenesſ at Gods hands, which I hope to obtain through his infinite Goodneſs and Mercy; and ſomewhat the rather, by your Chriſtian Prayers, which I expect and humbly beg of your Lordſhips and this whole Aſſembly. Now forasmuch as there hath been ſpeech and rumour of my wiſetledneſs in my Religion, I have for explanation thereof, not only made Confeſſion of my Faith, to thoſe two Worthy Doctors; but for better ſatisfaction to the World in that Point, expreſſed the ſame in writing under my Hand ſigned; which as it is here ſet down, I deſire may be publickly read.

The Confession of his Faith was read by a young Gentleman with a loud Voice, as followeth ;

In the Name of God, Amen. I Mervin Earl of Castlehaven being in my full strength and perfect Memory, Thanks be given to my Maker, having been branded and openly accused for Change, Alteration and Doubtfulness of my Faith and Religion, I thought it fit, like a Christian man, to give satisfaction upon what Grounds I stand for my Belief, and I express it under my Hand for the satisfaction of all charitable people and Christian men.

First, I do believe in the Blessed and Glorious Trinity, three Persons, one Eternal and ever-living God, God the Father, God my Redeemer, God my Sanctifier. I do believe upon the Merit, Death and Passion of our Blessed Saviour Christ Jesus, and upon his Mediation for the Remission of my Sins.

I do believe and use with most humble Reverence, the Lords Prayer, the Creed of the Apostles, and the Ten Commandments, as they are set down and allowed by the Church of England.

I do believe the Canonical Scriptures, that they are written by the inspiration of the Holy Spirit.

I do believe the Book of Common Prayer allowed of in the Holy Scripture, and in the Church of England, to be an excellent Form for the Service of God, and to the use of the same ; and for the rest of my Belief, I do refer it to the true orthodox Faith of the Church of England.

And for the Articles received at this present time in the Church of England, and confirmed by the Authority of Parliament, I do not differ in any Points, renouncing all the superstitious Errors taught or believed in the Church of Rome, or any other Church. In which Faith I will continue, God willing, to my Lives end ; in testimony whereof, I have here subscribed my Hand the first Day of May 1631.

Then he proceeded:

I acknowledge the great Justice and Mercy of the Kings Majesty ;
D His

His Justice, in bringing me to the Bar ; and His Mercy in affording me such a Noble and Gracious Trial here ; and I give His Majesty humble and hearty Thanks for signing my Death to be in this manner, contrary to the Sentence pronounced against me at my Arraignment : But there is a greater Favour than this, for which I am to render Thanks unto His Sacred Majesty, and that is, the long time I have had to repent in ; whereof (praised be Almighty God) I can speak with comfort, I have made good use, and am now fully prepared for Death, and much the better, by the good help and instruction of these two worthy men, to whom I acknowledge my self bounden, and do here before you all give them hearty Thanks for their great pains taken in coming to me, praying for me, and preaching and reading to me.

And I desire your Lordships to present my humble acknowledgment to His Majesty, and for His Goodness in sending them to me, and my Thanks for the same.

I do also from my heart desire and beseech Almighty God to bless the Kings Majesty, the Queen, and the Young Prince, together with all such other Issue as he shall hereafter in Mercy bestow on them, and the whole State : and my Trust and Desire is there may be ever one of there Line to sway the Scepter of these Kingdoms to the Worlds end.

And I beseech, and do heartily pray for the Welfare and happy Prosperity of the King and Queen of Bohemia, with all their Princely Issue. I do again desire your Lordships to make Tender of my humble acknowledgement of his Mercy and Goodness.

And now lastly, That you will not bend your Eyes so much upon me, as your Hands and Hearts to Heaven in Prayers for me ; and so I take my last Farewel of your Lordships and the World.

Then he went again to his private Prayers, which being done, he prepared himself for Death, striving to shew the like Courage and Magnanimity which he had formerly done, unto the last ; but sight of the Headsman (whom yet he freely forgave, and took him by the hand, bidding him do his Office manfully) together with the apprehension of his near approaching End, made him somewhat to change colour, and shew some signs of trembling Passion ; for his Hands

shook

hook a little in undoing his Band-strings; which his man perceiving, stept to him and helpt him, as also off with his Doublet. Then taking leave again of the Lords, the Doctors, and his man, saying a very short Prayer by himself, he pulled down his Handkercher over his Face, and laid his Head upon the Block; which was watched for by the Executioner, who instantly at one Blow smote it off.

And thus died that Great Lord of *Castle-Haven*.

FINIS.
